

1 BEFORE THE STATE OF WASHINGTON
2 ENERGY FACILITY SITE EVALUATION COUNCIL
3

4 In the Matter of Application No. 2003-01:

EXHIBIT # 42 SUP REB (DRP-SUP REB)

5 SAGEBRUSH POWER PARTNERS, LLC;

6 KITTITAS VALLEY WIND POWER PROJECT
7
8
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10 **APPLICANT'S PREFILED SUPPLEMENTAL REBUTTAL TESTIMONY**
11 **WITNESS 42: DANA PECK**
12

13 Q. Please state your name and business address.
14

15 A. My name is Dana Peck and my business address is 222 E. 4th Ave., Ellensburg WA 98926. I
16 commute daily from my home in Goldendale, Klickitat County, Washington to my job.
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18 Q. What is the purpose of this testimony?
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20 A. I am testifying to respond to specific pre-filed response testimony of Darryl Piercy.
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22 Q. On page 7:16-25 Mr. Piercy says that the applicant chose to revise turbines, it was not done at
23 County suggestion.
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25 A. This statement is not true, County staff strongly urged us to reduce the number to 65.

EXHIBIT 42 SUP REB (DRP-SUP REB) - 1
DANA PECK
PREFILED SUP REB TESTIMONY

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2 Q. Mr. Piercy, in his Response Testimony at 10:10-23 suggests that the County did not care about
3 the megawatt (MW) rating of the turbines proposed and responds no, with an explanation. Do
4 you agree with Mr. Piercy's response of no.

5
6 A. Absolutely not. Mr. Piercy in his own testimony at 10:12-23 describes the reason behind the
7 Applicant's decision to remove references to megawatts and address only number of turbines.
8 Mr. Piercy did indeed recommend the removal of references to megawatts to avoid future
9 revisions to the development agreement should new technology be available that would result in
10 higher megawatts being produced from turbines of the same physical dimensions than identified
11 in the development agreement, which the Applicant agreed with and amended the documents
12 accordingly.

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14 Q. Mr. Piercy, in his Response Testimony at 11:1-6, characterizes the Applicant's pre-filed
15 testimony as stating that the County staff "would not assist or work with them on this project."
16 Does Mr. Piercy properly characterize the Applicant's testimony?

17
18 A. No. There is absolutely no pre-filed testimony stating that County staff would not work with the
19 Applicant. Instead, the following transcript references supply acknowledgement, by Horizon
20 representatives, of the assistance of county staff: Jan 11, at pg. 168; March 30, at page 77; April
21 12, page 57; April 27, page 19 and 32; and May 3, at page 46.

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23 What became obvious very quickly, however, was the lack of coordination between the BOCC
24 and County staff with respect to the Board's expectations. As discussed in my prior pre-filed
25 direct testimony, and by way of illustration only, we were first encouraged by staff to use the

1 Wild Horse Development Agreement as a template for the Kittitas Valley project. As became
2 evident from the chastising we received from the BOCC on April 12, the use of the Wild Horse
3 agreement was clearly not what the Board had wanted. However, even after the Applicant was
4 chastised by the BOCC for having the temerity to use Wild Horse as a template, the KV
5 development was critiqued by both Mr. Piercy and Mr. Hurson (May 6, 2006 transcript at 34-39
6 and 39-45 respectively) about differences between the two that somehow appeared suspect,
7 because items that had appeared in the Wild Horse development agreement that were not
8 present in the Kittitas Valley draft development agreement. Another illustration includes a staff-
9 level meeting at which Mr. Piercy and I were both present and discussed the issues raised in a
10 letter by former CDS employee Clay White regarding the KVVPP application. Three items
11 were pointed out by staff as on-going concerns. Mr. Piercy was asked to advise the Applicant if
12 there were any other outstanding issues arising from that letter. We were assured there were not.
13 At the subsequent joint hearings that began on January 10, 2006, however, Mr. Piercy indicated
14 to the BOCC, in contravention to the representations made directly to Horizon in staff-level
15 meetings, that "many of the issues that are contained in [a] letter continue be valid in terms of
16 Kittitas County concerns..." January 10, 2006 transcript at 37:10-25, 38:1.

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18 The record is rife with these collisions between the Board's desires and the scope of delegation
19 to its staff. The Kittitas Valley Wind Power Project is a very complex and significant proposal
20 for the Applicant, the County, and its taxpayers. It is imperative that the policy of the elected
21 representatives be clearly conveyed to the staff, so that applicants can have their projects
22 processed in a predictable manner. This did not happen in the case of the KVVPP project and is
23 symptomatic of the County's wind energy overlay approach where a project-specific
24 development agreement must be prepared by an applicant and submitted prior to any knowledge
25 of the "substantive policy choices" to be made by the BOCC. The problems created by this

1 approach are assessed in the prefiled testimony of Roger Wagoner and reflected in the project
2 chronology described in my prefiled testimony. This is not a shortcoming of staff, but an
3 intrinsic conflict in the application of the County process requiring policy and project-specific
4 issues to be developed simultaneously.

5
6 Q. In his testimony, at page 15:20-23, Mr. Piercy references the Applicant's belief that it could not
7 submit additional information into the record after the close of the record itself. In response
8 thereto, Mr. Piercy indicates that the Applicant was invited to do so, but simply refused. Is this
9 an accurate characterization of the County's management of the record and the Applicant's
10 response thereto?

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12 A. No. I would first note that the BOCC itself made it clear that it was not going to accept anything
13 new into the record after the close of the record. In fact, as early as April 12, 2006, Kittitas
14 County Deputy Prosecutor James Hurson discussed, on the record (page 58 line 1 and page 59
15 lines 1-4), his concerns about new evidence being introduced and that the same might trigger the
16 need to re-open hearings. Weeks later, on April 27, Mr. Piercy reinforced the Applicant's
17 understanding that presenting new information was not permissible when he offered to the
18 BOCC, on the record page 16 lines 17-22, his interpretation that a matrix provided by Horizon,
19 which simply summarized where certain information could be found in the existing record, also
20 somehow constituted new information. On May 3, Commissioner Huston stated, on the record
21 page 50 lines 13- 18, that introduction of new information might trigger the need to reopen the
22 meetings for additional public comment. It was made clear to the Applicant by the BOCC and
23 its legal and planning staff, that introduction of new evidence would reopen the cycle of
24 hearings which had already taken many nights over several months. After repeated warnings
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1 about the consequences of introducing new evidence, the Applicant declined the County's
2 invitation to step over that line and re-start the process.

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4 Q. In his testimony at page 14, at lines 15-23, Mr. Piercy explains why economic viability should
5 constitute an element of Kittitas County's land use decision. Do you agree that land use
6 consistency requires demonstration of economic viability?

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8 A. It is unfortunate that an applicant who declines to accede to a demand from an agency because
9 of a business decision such as economic viability, which is solely within the applicant's
10 discretion, is suddenly subject to being accused of "refusing to comply" (Piercy testimony at
11 page 14:18). By the point at which Horizon indicated that it could go no further than 1,320 feet
12 on a setback, it had already analyzed and put forth three defined setback distances without any
13 indication from the BOCC of an acceptable setback or even criteria for determining acceptable
14 setbacks. A business decision such as economic viability has absolutely nothing to do with how
15 a county assesses land use consistency. Nonetheless, I invite the Council's careful review of the
16 Applicant's response to the County's first informal request for discovery as attached to the Pre-
17 Filed Supplemental Rebuttal Testimony of Chris Taylor regarding economic viability to assess
18 for itself whether the Applicant has acted appropriately and in accordance with an established
19 land use consistency determination process.

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21 Q. Mr. Piercy identified the omission of the April 12, 2006 testimony on 16:13-20. Can you please
22 respond?

1 A. The April 12, 2006 was omitted in the testimony by clerical error. This was an unfortunate
2 oversight on our part, particularly as the transcript of that night is especially illustrative of how
3 the process was administered.
4

5 Q. Do you agree with the suggestion in Mr. Piercy's Response Testimony, at 17:1-10, that the
6 Applicant was responsible for the delay associated with the preparation and submittal of the
7 supplemental DEIS to review the revised layout of the KVVPP project?
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9 A. I not only disagree, but point out that the Applicant attempted to expedite the process by
10 providing to the County the individual resource reports of the addendum DEIS in advance of
11 their inclusion and analysis in the addendum itself. It is unclear why the County fails to
12 acknowledge this in its testimony.
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